

ESTTA Tracking number: **ESTTA643386**

Filing date: **12/09/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	ML Bagels, LLC		
Entity	limited liability company	Citizenship	California
Address	9689 Santa Monica Blvd. Beverly Hills, CA 90210 UNITED STATES		

Attorney information	Farhad Novian Novian & Novian LLP 1801 Century Park East, Suite 1201 Los Angeles, CA 90067 UNITED STATES sharon@novianlaw.com Phone:(310) 553-1222
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Registration Subject to Cancellation

Registration No	4410442	Registration date	10/01/2013
Registrant	Kaplan, Jason I. 211 West 56 Street, Apt 4f New York, NY 10019 UNITED STATES		

Goods/Services Subject to Cancellation

Class 035. First Use: 2013/01/30 First Use In Commerce: 2013/01/30 All goods and services in the class are cancelled, namely: Online retail bakery shops; retail bakery shops
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Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Application No.	86208063	Application Date	02/28/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	THE NOSH		

Design Mark	THE NOSH
Description of Mark	NONE
Goods/Services	Class 043. First use: First Use: 1991/07/01 First Use In Commerce: 1991/07/01 restaurant services, catering services

U.S. Application No.	86208131	Application Date	02/28/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	THE NOSH OF BEVERLY HILLS		
Design Mark	THE NOSH OF BEVERLY HILLS		
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 1991/07/01 First Use In Commerce: 1991/07/01 restaurant services, catering services		

Attachments	86208063#TMSN.png(bytes) 86208131#TMSN.png(bytes) Petition to Cancel Nosh NY.pdf(20399 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Farhad Novian/
Name	Farhad Novian
Date	12/09/2014

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ML BAGELS, LLC
Petitioner,

Registration No. 4410442

v.

PETITION FOR CANCELLATION

JASON I. KAPLAN
Registrant.

In the matter of the Trademark Registration No. 4410442 in Class 35 for "Online retail bakery shops; retail bakery shops," which was filed on January 31, 2013 and issued on October 1, 2013, (the "Registration") for the word mark THE NOSH (the "Registrant's Mark") owned by JASON I. KAPLAN, an individual, having an address of 211 West 56 Street, Apt 4f, New York, NY 10019 ("Registrant"). ML BAGELS, LLC, a limited liability company organized and existing under the laws of California, and having a principal place of business at 9689 Santa Monica Blvd., Beverly Hills, CA 90210 (hereinafter referred to as "Petitioner"), believes it has been and will be damaged by Registrant's Mark and hereby seeks cancellation of same.

The grounds for the cancellation are as follows:

1. Registrant claims to own the rights in Registrant's Mark by virtue of his use in commerce, and has obtained the Registration on the same basis. Registrant claims a date of first use of January 30, 2013.
2. Petitioner provides restaurant and catering services under the names "The Nosh" and "The Nosh of Beverly Hills" ("Petitioner's Marks"). Petitioner has made actual use of Petitioner's Marks in commerce since at least July 1, 1991, and on that basis has filed USPTO Trademark Applications in Class 43 for "restaurant

services; catering services” for the word mark “The Nosh” bearing Serial No. 86208063 and the word mark “The Nosh of Beverly Hills” bearing Serial No. 86208131 (“Petitioner’s Applications”).

3. Petitioner’s rights in Petitioner’s Marks can be traced back to as early as July 1991, since which time Petitioner has made continuous use of Petitioner’s Marks in commerce. Such use predates use of Registrant’s Mark by over twenty-one (21) years and, on that basis, Petitioner has superior rights to the mark THE NOSH.
4. Petitioner is making active use in commerce of Petitioner’s Marks. This includes restaurant services and catering services as evidenced by Petitioner’s Applications and the samples of use submitted concurrently therewith.
5. Registrant’s Mark so resembles Petitioner’s Marks as to be likely to cause confusion, mistake or deception within the meaning of Section 2(d) of the Trademark Act.
6. The Registration poses a threat to Petitioner’s Mark in that the Registration has been used as a basis to challenge Petitioner’s Applications by virtue of USPTO office actions.
7. Registrant’s Mark creates a substantial obstacle towards the registration of Petitioner’s Applications, in which mark Petitioner has superior rights by virtue of its earlier and continuous use in commerce since at least July 1991.
8. For the foregoing reasons, Petitioner is being damaged and harmed by the Registration.

WHEREFORE, Petitioner prays that the Registration be canceled in its entirety.

/Sharon Raminfard/

Dated: December 9, 2014

SHARON RAMINFARD
Attorney for Petitioner
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing PETITION FOR CANCELLATION was served on Registrant on December 9, 2014 as follows:

BY U.S. MAIL

Jason I. Kaplan
211 West 56 Street, Apt 4f
New York, NY 10019

/Amanda McGill/
AMANDA MCGILL

Date: December 9, 2014